REMARKS

The Examiner has rejected claims 1 - 5, 7 - 12, and 14 - 26 under 35 U.S.C. 103(a) as being unpatentable over WOLF et al. in view of ABEL et al. The Examiner has rejected claims 6 and 13 under 35 U.S.C. 103 as being unpatentable over WOLF et al. in view of ABEL et al. in further view of LEVIN et al. Applicant respectfully traverses.

The References Relied upon by the Examiner Are Non-analogous

The references relied upon by the examiner are non-analogous. "Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979)."

The claimed invention is in the field of enabling customers to create interactive voice response (IVR) services. More specifically, the claims relate to customizing an IVR service application for a customer. The customer can implement the customization relatively easily and quickly, without involving source code programming. The customer can use building blocks that contain complex functionality to help create the custom IVR applications.

In contrast, ABEL et al. pertain to routing communications from a central processing unit to one of a plurality of remote locations. As described in col. 3, lines 10 – 20, ABEL et al. enhance and ensure reciprocity in the sending of orders among florists and provide a more efficient method of making payment settlements. Such a system ensures that merchants located in or who serve a specific area receive reciprocal (incoming) orders in proportion to their sending activity in relation to the sending activity of other florists members located in or servicing the same area. Generally speaking, ABEL et al. ensure and enhance referrals or reciprocal business, as stated at col. 4, lines 46 – 49.

Thus, it is submitted that the routing control program of ABEL et al. is not in the same field of endeavor (i.e., enabling customers to easily create IVR applications) as the claimed invention. Moreover, it is submitted that the programming taught by ABEL et al. is entirely unrelated to the problem the claimed invention solves. More specifically, ABEL et al. provide no discussion or suggestion of simplifying and facilitating creation of IVR service applications. As stated in paragraphs 0003 – 0005, the claimed invention is directed to the problem of the complicated source code programming typically required to create custom IVR applications. Consequently, ABEL et al. is non-analogous art.

There Is No Motivation to Combine WOLF with ABEL et al.

Even if the references are considered analogous (which they are not), There is no suggestion, motivation, incentive, or reason to combine the references in the manner proposed by the examiner, except that provided in applicant's specification. "[T]he record must provide a teaching, suggestion, or reason to substitute computer-controlled valves for the system of hoses in the prior art. The absence of such a suggestion to combine is dispositive in an obviousness determination." *See SmithKline Diagnostics, Inc. v. Helena Lab. Corp.*, 859 F.2d 878, 886-87, 8 USPQ2d 1468, 1475 (Fed. Cir. 1988).

The examiner has not provided a proper reason for the proposed combination. The examiner states that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of WOLF using the system database as taught by ABEL et al. This modification of the invention of WOLF would enable each designer tool kit modules [sic] having a database that is separate from the dynamic interactive database so that the system would ensure that merchant who are locate [sic] in remote area receive incoming orders."

Merchants located in remote areas would not be guaranteed to receive incoming orders because of the proposed combination. Remote merchants would receive incoming orders because service is desired in their remote area. For example, if a merchant is located in South Dakota, and a customer wants

flowers to be delivered in South Dakota, the South Dakota merchant would receive the order, even if the order was called into a merchant local to the customer, simply because the merchant is located at the destination desired by the customer. The teachings of WOLF (i.e., how to create a user customizable IVR system) are unrelated to ensuring that remote merchants receive incoming orders.

The examiner has equated WOLF's voice templates with the claimed designer tool kit modules (DTKs) and presumably with the claimed feature specific node types. WOLF's voice templates are described at col. 4, lines 18 – 27, and also at col. 6, - col. 7, line 54. Essentially, the voice templates include messages that will be played to a caller who calls into the IVR. In the example shown in Fig. 4, the voice template is "Press 1 to leave a message for Richard." Creating extra databases for each voice template would not appear to cause the result claimed by the examiner, i.e., ensuring remote merchants would receive incoming orders.

Furthermore, creating a separate database for each voice template would result in an unmanageable system due to the large number of required databases. The voice templates of WOLF are very basic components of the IVR system. Many voice templates would be used in a typical IVR application because each voice template corresponds to a single item in a single menu. Of course numerous items can be provided in each menu, and an unlimited number of menus can be provided (*see* col. 4, line 13 – 18 where WOLF states the number of menus and records per menu is unlimited). Thus, a very large number of voice templates (which are a subset of menu records) is likely. If each individual voice template has its own database, a very large number of individual databases would have to exist. Thus, the combination would not make sense.

In view of all of the reasons described above, it is submitted that no motivation exists for combining the references, as the examiner has proposed.

<u>The Combination of WOLF and ABEL et al. Does Not Teach or Suggest All of the Limitations of Claims 1, 7, 14, 16, 17, and 20</u>

Even if combined, the references fail to teach all the limitations, namely: Claim 1 requires "A method for implementing a customized instance of a dynamic interactive voice system . . . the method comprising: configuring a call flow that incorporates . . . a plurality of standard nodes and a plurality of preprogrammed designer tool kit modules, each designer tool kit module having a database that is separate from the dynamic interactive database, at least one of the designer tool kit modules being a call library application, at least one of the designer tool kit modules being a zip code locator module, and at least one of the designer tool kit modules being a voice forms module . . ." Claim 7 recites "A method for configuring for a customer a customized instance of a dynamic interactive voice application . . . the method comprising: storing a plurality of nodes . . . comprising at least one standard node type . . . and a plurality of preprogrammed feature specific node types, at least one of the feature specific node types being a call library application, and at least one of the feature specific node types being a zip code locator module . . ."

In contrast, the applied references do not teach or render obvious to one having ordinary skill in the art, at least, the specifically claimed applications. For example, a call library application is required by claim 1. With respect to this limitation, applicant is acting as his own lexicographer.

To understand this term, the specification should be consulted, as held by the Federal Circuit, sitting *en banc*, in PHILLIPS, v. AWH CORPORATION (03-1269, -1286 July 12, 2005) The claims, of course, do not stand alone. Rather, they are part of "a fully integrated written instrument," Markman, 52 F.3d at 978, consisting principally of a specification that concludes with the claims. For that reason, claims "must be read in view of the specification, of which they are a part." Id. at 979. As we stated in Vitronics, the specification "is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." 90 F.3d at 1582.

This court and its predecessors have long emphasized the importance of the specification in claim construction. In Autogiro Co. of America v. United States, 384 F.2d 391, 397-98 (Ct. Cl. 1967), the Court of Claims characterized

the specification as "a concordance for the claims," based on the statutory requirement that the specification "describe the manner and process of making and using" the patented invention.

The specification is, thus, the primary basis for construing the claims." Standard Oil Co. v. Am. Cyanamid Co., 774 F.2d 448, 452 (Fed. Cir. 1985). That principle has a long pedigree in Supreme Court decisions as well. See Bates v. Coe, 98 U.S. 31, 38 (1878) ("in case of doubt or ambiguity it is proper in all cases to refer back to the descriptive portions of the specification to aid in solving the doubt or in ascertaining the true intent and meaning of the language employed in the claims"); White v. Dunbar, 119 U.S. 47, 51 (1886) (specification is appropriately resorted to "for the purpose of better understanding the meaning of the claim"); Schriber-Schroth Co. v.Cleveland Trust Co., 311 U.S. 211, 217 (1940) ("The claims of a patent are always to be read or interpreted in light of its specifications."); United States v. Adams, 383 U.S. 39, 49 (1966) ("[I]t is fundamental that claims are to be construed in the light of the specifications and both are to be read with a view to ascertaining the invention.").

Consistent with that general principle, our cases recognize that the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor's lexicography governs. See CCS Fitness, Inc. v. Brunswick Corp., 288 F.3d 1359, 1366 (Fed. Cir. 2002).

As required by the courts, the examiner is respectfully directed to paragraphs 0045 – and 0046 of the specification, which explains a call library module. The call library module allows a customer's caller to select and hear pre-established voice announcements and messages from a customer maintained library. It also enables the configuration application to send faxes from a customer-maintained library of facsimile messages, which may correspond to the voice announcements.

The complex functionality *required* by a call library application is not taught or suggested by the proposed combination. The examiner appears to rely upon Fig. 1 and col. 6, line 50 – col. 8, line 35 of ABEL et al. to support the

rejection. Those passages, as well as the rest of the reference do not disclose any type of call library, much less the claimed call library, described in the specification.

The portion relied upon by the examiner describes a subscriber database that stores information about each subscriber. Exemplary fields include zip codes served by the florist, name, address, number of orders sent, number of orders received, etc. The selection database merely includes a subset of the subscriber database. *See* col. 7, lines 29 – 33. No call library functionality is provided by the selection database or the subscriber database.

The transaction database stores account billing and operational data. Exemplary fields include credit card information, number or orders sent and received, etc. No mention or suggestion of a call library is provided. The zip code database references street addresses and cities to their appropriate zip codes. Again, no mention or suggestion of a call library function is provided by the zip code database.

Clearly, at least a DTK with the complex functionality of a call library is missing from the proposed combination.

Moreover, the databases of ABEL et al. are not comparable to the claimed DTKs and feature specific node types. Thus, even though ABEL et al. disclose a zip code database, the claim term (e.g., of claim 16) requires a zip code locating node that is executable by the IVR application according to a call flow of a customized instance of a dynamic interactive voice application. Paragraph 0049 further describes the claim term as enabling a customer's caller to find nearby customer locations based upon the callers' respective zip codes. The database of ABEL does not provide any such functionality, and is not *executable*, as required by claim 16.

Several of the claims also require a voice forms module. As described in paragraphs 0047 and 0048, the voice forms module enables customers to define a collection of automated audio forms that are completed by a caller over a DTMF telephone, thereby collecting and organizing information from the caller. None of the databases of ABEL et al. include customer defined fields. Rather,

each database field is defined by ABEL et al. Moreover, as noted above with respect to claim 16, ABEL et al's databases are not *executable*.

More generally speaking, the claims define a capability to design an IVR application with building blocks. DTKs are one type of building block. As stated in paragraph 0040, the DTK modules are pre-designed to address select functionality that is anticipated to be in demand by multiple customers. Claimed examples of such functionalities include the call library, zip code locator, and voice forms modules. In contrast, WOLF only provides very generic very basic tools to create an IVR application. No thought is given to actually creating more complex building blocks, such as the claimed DTKs, to simplify the design of an IVR application. With respect to the claim language of claims 7, 16, and 20, "feature specific node types" are submitted to be patentably distinguishable from the generic functionality of WOLF's voice templates.

The mere fact that ABEL et al. disclose multiple databases would not lead one of ordinary skill in the art to create a separate database for each of WOLF's voice templates. As mentioned above, a separate database for each voice template would yield too may databases to be practical. In addition, just because separate databases exist, does not lead one of ordinary skill in the art to incorporate that teaching into WOLF et al., especially because the multiple databases of ABEL et al. are for use by the overall routing controller program, i.e., the overall system. Thus, there is no teaching of a different database for different components of the overall system, as required by claim 1.

Consequently, for at least these reasons, it is requested that the Examiner withdraw the rejections of independent claims 1, 7, 14, 16, 17, and 20 and provide an indication of their allowability.

Dependent claims 2 - 6, 8 - 13, 15, 18, 19, and 21 - 26 are also believed to recite further patentable subject matter of the invention and therefore are also believed allowable over the prior art. As such, allowance of the dependent claims is deemed proper for at least the same reasons noted for the independent claims, in addition to reasons related to their own recitations. Accordingly, applicant respectfully requests reconsideration of the outstanding rejections and

an indication of the allowability of all of the claims in the present application.

The above amendments have been presented merely for the purpose of clarification, and not to overcome the applied prior art. Accordingly, no estoppel is deemed to result from any of the present amendments.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,
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